IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE.

CRIMINAL APPEAL NO. 858 OF 1990.

The State of Maharashtra ..Appellant.

vs.

Anant Gurunath Jotrao ..Respondent.

Shri D.P. Adsule, A.P.P. for the State.
Shri C.R. Sonawane for the respondent.

CORAM: V.M.KANADE,J.
DATED: 24-01-2005.

ORAL JUDGMENT:

1. This appeal is directed against the judgment and order passed by the Special Judge, Thane, in Special Case No. 9 of 1985. By the said judgment and order dated 23.7.1990, the Special Judge was pleased to acquit the accused of the offences punishable under section 161 of the Indian Penal Code and of the offences punishable under section 5(2) read with section 5(1)(d) of the Prevention of Corruption Act, 1948.

2. The brief facts of the prosecution case are that the complainant- Yeshwant Gosavi was a tenant of one Khandu Koli, owner of a residential chawl. There were in all 9 tenants in the said building. The complainant-Yeshwant Gosavi was leader of the tenants who were residing on the ground floor. The

prosecution case is that the complainant used to collect electric charges from the tenants and used to make payment of electric bills. The tenants received one bill upto the period ending June 1984, which was in the sum of Rs. 1768.25. The tenants claimed that the said bill was excessive and accordingly, an application was made to the Assistant Engineer to look into the matter regarding excessive bill which was charged to the tenants. The last date for making payment of the bill was 16.8.1984 and since the tenants did not make payment of the bill before due date, the electric supply was temporarily suspended by the Maharashtra State Electric Board. Thereafter on 311.1.1984 the tenants made payment of the said bill. However, another bill was received in the sum of Rs. 350/- which was on account of interest for delayed payment of the bill.

3. The prosecution case is that thereafter another bill was received for the period ending September 1984, which was in the sum of Rs. 1868.96. The complainant, therefore, contacted the accused, who informed him that he would reduce the bill on payment of Rs.400/- as bribe. The complainant thereupon approached the Anti Corruption Bureau and a complaint was filed against him. Pretrap panchanama was prepared on 9.1.1985 and the amount was paid to the accused and thereafter accused took out two

electricity bills and kept them on the table. After pre-arranged signal was given by the complainant, Rs. 400/- were seized from his left side pocket of his bush-shirt. Offence was registered against him. Sanction to prosecution was awarded by the appropriate authority and charge-sheet was filed. The prosecution examined 8 witnesses. The trial Court by its judgment and order dated 23.7.1990 was pleased to acquit the accused for the offences with which he was charged.

4. The learned A.P.P. appearing on behalf of the State has taken me through the judgment and order of the trial Court as also the evidence which is brought on record by the prosecution.

5. From the evidence it can be seen that the accused was working as a Lower Divisional Clerk in the office of M.S.E.B. at Kalwa. He was entrusted the duty of preparing electricity bills in respect of electric connection at village Dighe. P.W.3-Purshottam Joshi was working as Assistant Accountant in the office of the M.S.E.B. at Bhiwandi. He has stated in his evidence that the disputed bill could have been fabricated by the interested person. He has stated that the bill for the quarter ending September 1984 was for Rs. 1004.37. He has further stated that from the abstract entry it can be seen that the figure 1868.96 was written above the figure 1004.37. This

witness, therefore, admitted that Ex.24 was a fabricated bill. He has admitted in his cross-examination that blank forms of the bills were openly kept in the office and that any clerk could take any number of blank forms from the place where they were kept in the office. He has further admitted that it was a practice to prepare a single bill without carbon or duplicate bill. He also admitted that rubber stamp of the signature of the Assistant Engineer was also openly kept in the office. He further stated in the cross-examination that in case any complaint was received by the Assistant Engineer, he was authorised to make enquiry in the complaint and take appropriate decision. He further admitted that the accused was not authorised to make correction in the bill or to issue fresh corrected bill. In the light of this evidence, it is essential consider the defence of the accused. According to the accused, bill for Rs. 1868.96 was a fabricated document which was brought into existence with the help of P.W.4-Sadababd Tukaram Tawde, who was working as a Peon in the office. The case of the defence is that the complainant-Gosavi and Tawde were hand in glove and were working for mutual benefits. Gosavi used to collect amount from the tenants on the basis of the fabricated bill which was given to him by Tawde and after payment of corrected bill balance was shared between the two.

6. P.W. 1- Yeshwant Gosavi who is the complainant has stated in his evidence that on 8.1.1985 he met one clerk and complained about excessive bill which he had received. According to this witness, this clerk had met the accused. The complainant-P.W.1 has further stated in his evidence that the accused offered to reduce the amount of bill and demanded Rs.400/- as bribe. From the evidence of P.W. 3 it can be seen that accused was not concerned with issuance of bill Ex.24. P.W.1-Gosavi has also not stated how he got the said bill Ex.24. It is not the case of the complainant that bill was written in the handwriting of the accused. The prosecution has not examined any expert for the purpose of showing that the said bill was prepared by the accused in his own handwriting. In the light of this evidence, it is difficult to believe the story of the prosecution that demand and acceptance was made with a particular intention. This assumes importance because according to P.W.3, accused had no authority to do the work for which bribe was demanded. P.W.1 in his evidence has admitted that accused had no power in law to reduce the amount of bill and he has admitted that he did not believe the accused when he said that he will reduce the bill.

7. From the evidence of P.W.1, P.W.2 and P.W.8 it

can be seen that these three witnesses have given three different versions regarding recovery of the amount from the accused. P.W. 1- Gosavi in his evidence has stated that after accused had accepted the bribe amount, he kept it in the right side pocket of his Nehru shirt. P.W.2 on the contrary has stated in his evidence that the accused kept the currency notes in the left side pocket of his Nehru shirt. P.W.8- Pawar has stated that accused took out amount from the left side of his pocket of Nehru shirt. The prosecution has not examined other independent witnesses who had seen the recovery of the amount from the accused. The prosecution has not examined the Manager of the hotel , hotel boy or others who were present in the hotel at that time. There are three different versions recovery of currency notes and, therefore, version of the prosecution regarding the recovery of money from the accused becomes doubtful.

8. Moreover, panch witness who accompanied the complainant has candidly stated in his evidence that he was not in a position to hear the conversation between the complainant and the accused as he was at a distance of 15 feet from the accused. Thus, acceptance of the amount by the accused and also recovery of the amount from the accused has not been proved by the prosecution beyond reasonable doubt. In my view, there is serious lacuna in the case of the

prosecution and demand and acceptance by the accused has not been proved by the prosecution. The accused is, therefore, entitled to get benefit of doubt in such circumstances. The trial Court has given cogent reasons while coming to the conclusion that the prosecution has not established the offence against the accused beyond reasonable doubt. There is no reason to interfere with the judgment and order of the trial Court. Appeal is accordingly dismissed.

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